

1 Whitney, Thompson & Jeffcoach LLP
2 Mandy L. Jeffcoach, #232313
3 mjeffcoach@wtjlaw.com
4 970 W. Alluvial
5 Fresno, California 93711
6 Telephone: (559) 753-2550
7 Facsimile: (559) 753-2560

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10 Attorneys for Jesus Chavez, Sr.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

10 YELLOWCAKE, INC., A CALIFORNIA
11 CORPORATION,

12 Plaintiff,

13 v.

14 HYPHY MUSIC, INC.,

15 Defendant.

16 HYPHY MUSIC, INC.,

17 Counterclaimant,

18 v.

19 YELLOWCAKE, INC.; COLONIZE MEDIA,
20 INC.; JOSE DAVID HERNANDEZ; JESUS
21 CHAVEZ SR.,

22 Counterdefendants.

Case No. 1:20-CV-00988-DAD-BAM

**JESUS CHAVEZ SR. ANSWER TO FIRST
AMENDED COUNTERCLAIMS**

The Hon. Dale A. Drozd

Counterdefendant, JESUS CHAVEZ, ("Chavez") by and through his counsel, Whitney, Thompson & Jeffcoach LLP hereby responds to Defendant/Counterclaimant HYPHY MUSIC, INC.'s ("Hyphy") First Amended Counterclaim ("FAC") as follows:

NATURE OF THE ACTION

3 1. Paragraph 1 of the First Amended Counterclaim does not contain any allegations or
4 statements of fact to which a response is required. To the extent any such response is required,
5 Chavez denies the remaining allegations in Paragraph 1 of the FAC.

THE PARTIES

7 2. Chavez lacks knowledge or information to form a belief as to the allegations set
8 forth in Paragraph 2 of the FAC.

9 3. Chavez lacks knowledge or information to form a belief as to the allegations set
10 forth in Paragraph 3 of the FAC.

11 4. Chavez lacks knowledge or information to form a belief as to the allegations set
12 forth in Paragraph 4 of the FAC.

13 5. Chavez lacks knowledge or information to form a belief as to the allegations set
14 forth in Paragraph 2 of the FAC.

15 6. Chavez admits the allegations set forth in Paragraph 6 of the FAC.

16 7. Chavez denies the allegations set forth in paragraph 7 of the FAC.

JURISDICTION

18 9. Chavez admits the FAC asserts claims for copyright infringement. Chavez states
19 that the claims asserted in the FAC speak for themselves and deny that the claims have any merit.
20 Chavez denies the remaining allegations in Paragraph 9 of the FAC.

21 10. The allegations in Paragraph 10 of the FAC assert legal conclusions to which no
22 response is required. Chavez denies the remaining allegations in Paragraph 10 of the FAC.

23 11. The allegations in Paragraph 11 of the FAC assert legal conclusions to which no
24 response is required. Chavez denies the remaining allegations in Paragraph 11 of the FAC.

25 12 The allegations in Paragraph 12 of the FAC assert legal conclusions to which no
26 response is required. Chavez denies the remaining allegations in Paragraph 12 of the FAC.

GENERAL ALLEGATIONS

28 13. Paragraph 13 of the FAC does not contain any allegations or statements of fact to

1 which a response is required.

2 14. Chavez lacks knowledge or information to form a belief as to the allegations set
3 forth in Paragraph 14 of the FAC.

4 15. Chavez admits the allegations set forth in Paragraph 15 of the FAC.

5 16. Chavez denies the allegations set forth in Paragraph 16 of the FAC.

6 17. Chavez denies the allegations set forth in Paragraph 17 of the FAC.

7 18. Chavez denies the allegations set forth in Paragraph 18 of the FAC.

8 19. Chavez denies the allegations set forth in Paragraph 19 of the FAC.

9 20. Chavez denies the allegations set forth in Paragraph 20 of the FAC.

10 21. Chavez denies the allegations set forth in Paragraph 21 of the FAC.

11 22. Chavez denies the allegations set forth in Paragraph 22 of the FAC.

12 23. Chavez denies the allegations set forth in Paragraph 23 of the FAC.

13 24. Chavez denies the allegations set forth in Paragraph 24 of the FAC.

14 25. Chavez denies the allegations set forth in Paragraph 25 of the FAC.

15 26. Chavez denies the allegations set forth in Paragraph 26 of the FAC.

16 27. Chavez denies the allegations set forth in Paragraph 27 of the FAC.

17 28. Chavez denies the allegations set forth in Paragraph 28 of the FAC.

18 29. Chavez denies the allegations set forth in Paragraph 29 of the FAC.

19 30. Chavez denies the allegations set forth in Paragraph 30 of the FAC.

20 **FIRST CLAIM FOR RELIEF**

21 **Direct Infringement of Plaintiffs' Rights Under 17 U.S.C. § 101 et seq. as to the Los**

22 **Originales Albums**

23 **(Against Counter-Defendants Yellowcake and Colonize)**

24 Pursuant to an Order of the Court dated July 20, 2021 (Docket No. 42), this cause of action
25 has been dismissed and does not apply to Counterdefendant Chavez who was not named in the
26 claim. Notwithstanding this dismissal, to the extent an answer is required, Chavez answers as
27 follows:

28 31. Chavez repeats, realleges and incorporates by reference in this paragraph the

1 preceding responses to Paragraphs 1 through 30 of the FAC and incorporate them by reference as
2 though set forth fully herein.

- 3 32. Chavez denies the allegations set forth in Paragraph 32 of the FAC.
- 4 33. Chavez denies the allegations set forth in Paragraph 33 of the FAC.
- 5 34. Chavez denies the allegations set forth in Paragraph 34 of the FAC.
- 6 35. Chavez denies the allegations set forth in Paragraph 35 of the FAC.
- 7 36. Chavez denies the allegations set forth in Paragraph 36 of the FAC.
- 8 37. Chavez denies the allegations set forth in Paragraph 37 of the FAC.
- 9 38. Chavez denies the allegations set forth in Paragraph 38 of the FAC.
- 10 39. Chavez denies the allegations set forth in Paragraph 39 of the FAC.
- 11 40. Chavez denies the allegations set forth in Paragraph 40 of the FAC.
- 12 41. Chavez denies the allegations set forth in Paragraph 41 of the FAC.

13 **SECOND CLAIM FOR RELIEF**

14 **Direct Infringement of Plaintiffs' Rights Under 17 U.S.C. § 101 et seq. as to the Los
15 Originales Cover Art
16 (Against Counter-Defendants Yellowcake and Colonize)**

17 Pursuant to an Order of the Court dated July 20, 2021 (Docket No. 42), this cause of action
18 has been dismissed and does not apply to Counterdefendant Chavez who was not named in the
19 claim. Notwithstanding this dismissal, to the extent an answer is required, Chavez answers as
20 follows:

- 21 42. Chavez repeats, realleges and incorporates by reference in this paragraph the
22 preceding responses to Paragraphs 1 through 30 of the FAC and incorporate them by reference as
23 though set forth fully herein.
- 24 43. Chavez denies the allegations set forth in Paragraph 43 of the FAC.
- 25 44. Chavez denies the allegations set forth in Paragraph 44 of the FAC.
- 26 45. Chavez denies the allegations set forth in Paragraph 45 of the FAC.
- 27 46. Chavez denies the allegations set forth in Paragraph 46 of the FAC.
- 28 47. Chavez denies the allegations set forth in Paragraph 47 of the FAC.

- 1 48. Chavez denies the allegations set forth in Paragraph 48 of the FAC.
- 2 49. Chavez denies the allegations set forth in Paragraph 49 of the FAC.
- 3 50. Chavez denies the allegations set forth in Paragraph 50 of the FAC.
- 4 51. Chavez denies the allegations set forth in Paragraph 51 of the FAC.
- 5 52. Chavez denies the allegations set forth in Paragraph 52 of the FAC.

6 **THIRD CLAIM FOR RELIEF**

7 **Temporary, Permanent, and Injunctive Relief**

8 **(Against Counter-Defendants Yellowcake and Colonize)**

9 Pursuant to an Order of the Court dated July 20, 2021 (Docket No. 42), this cause of action
10 has been dismissed and does not apply to Counterdefendant Chavez who was not named in the
11 claim. Notwithstanding this dismissal, to the extent an answer is required, Chavez answers as
12 follows:

13 53. Chavez repeats, realleges and incorporates by reference in this paragraph the
14 preceding responses to Paragraphs 1 through 52 of the FAC and incorporate them by reference as
15 though set forth fully herein.

16 54. Chavez denies the allegations set forth in Paragraph 54 of the FAC.

17 **FOURTH CLAIM FOR RELIEF**

18 **Intentional Interference with Prospective Business Advantage**

19 **(Against Counter-Defendants Yellowcake and Colonize)**

20 This cause of action does not apply to Counterdefendant Chavez who was not named in the
21 claim. Notwithstanding this dismissal, to the extent an answer is required, Chavez answers as
22 follows:

23 55. Chavez repeats, realleges and incorporates by reference in this paragraph the
24 preceding responses to Paragraphs 1 through 54 of the FAC and incorporate them by reference as
25 though set forth fully herein.

26 56. Chavez lacks knowledge or information to form a belief as to the allegations set
27 forth in Paragraph 56 of the FAC as to any relationship between Hyphy and YouTube. Chavez
28 denies the remaining allegations set forth in Paragraph 56 of the FAC.

1 57. Chavez denies the allegations set forth in Paragraph 57 of the FAC.

2 58. Chavez denies the allegations set forth in Paragraph 58 of the FAC.

3 59. Chavez denies the allegations set forth in Paragraph 59 of the FAC.

4 **FIFTH CLAIM FOR RELIEF**

5 **Intentional Interference with Contractual Relations**

6 **(Against Counter-Defendants Hernandez, Yellowcake and Colonize)**

7 This cause of action does not apply to Counterdefendant Chavez who was not named in the
8 claim. Notwithstanding this dismissal, to the extent an answer is required, Chavez answers as
9 follows:

10 60. Chavez repeats, realleges and incorporates by reference in this paragraph the
11 preceding responses to Paragraphs 1 through 59 of the FAC and incorporate them by reference as
12 though set forth fully herein.

13 61. Chavez denies the allegations set forth in Paragraph 61 of the FAC except admit
14 that Hernandez is a principal of Colonize.

15 62. Chavez denies the allegations set forth in Paragraph 62 of the FAC.

16 63. Chavez denies the allegations set forth in Paragraph 63 of the FAC.

17 64. Chavez denies the allegations set forth in Paragraph 64 of the FAC.

18 65. Chavez denies the allegations set forth in Paragraph 65 of the FAC.

19 66. Chavez denies the allegations set forth in Paragraph 66 of the FAC.

20 **SIXTH CLAIM FOR RELIEF**

21 **Unfair Competition Under California Business and Professions Code § 17200**

22 **(Against Counter-Defendants Hernandez, Yellowcake and Colonize)**

23 This cause of action does not apply to Counterdefendant Chavez who was not named in the
24 claim. Notwithstanding this dismissal, to the extent an answer is required, Chavez answers as
25 follows:

26 67. Chavez repeats, realleges and incorporates by reference in this paragraph the
27 preceding responses to Paragraphs 1 through 66 of the FAC and incorporate them by reference as
28 though set forth fully herein.

- 1 68. Chavez denies the allegations set forth in Paragraph 68 of the FAC.
- 2 69. Chavez denies the allegations set forth in Paragraph 69 of the FAC.
- 3 70. Chavez denies the allegations set forth in Paragraph 70 of the FAC.
- 4 71. Chavez denies the allegations set forth in Paragraph 71 of the FAC.

5 **SEVENTH CLAIM FOR RELIEF**

6 **Conversion**

7 **(Against Counter-Defendants Yellowcake)**

8 This cause of action does not apply to Counterdefendant Chavez who was not named in the
9 claim. Notwithstanding this dismissal, to the extent an answer is required, Chavez answers as
10 follows:

- 11 72. Chavez repeats, realleges and incorporates by reference in this paragraph the
12 preceding responses to Paragraphs 1 through 71 of the FAC and incorporate them by reference as
13 though set forth fully herein.
- 14 73. Chavez denies the allegations set forth in Paragraph 73 of the FAC.
- 15 74. Chavez denies the allegations set forth in Paragraph 74 of the FAC.
- 16 75. Chavez denies the allegations set forth in Paragraph 75 of the FAC.

17 **EIGHTH CLAIM FOR RELIEF**

18 **Breach of Oral Contract**

19 **(Against Counter-Defendants Jesus Chavez, Sr.)**

20 76. Chavez repeats, realleges and incorporates by reference in this paragraph the
21 preceding responses to Paragraphs 1 through 75 of the FAC and incorporate them by reference as
22 though set forth fully herein.

- 23 77. Chavez denies the allegations set forth in Paragraph 77 of the FAC.
- 24 78. Chavez denies the allegations set forth in Paragraph 78 of the FAC.
- 25 79. Chavez denies the allegations set forth in Paragraph 79 of the FAC.
- 26 80. Chavez denies the allegations set forth in Paragraph 80 of the FAC.

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

81. The FAC fails to state a counterclaim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

82. The counterclaims in the FAC are barred in whole or in part by the applicable statute of limitations in 17 U.S.C. § 507(b).

THIRD AFFIRMATIVE DEFENSE

83. The counterclaims in the FAC are barred in whole or in part by implied license or contract.

FOURTH AFFIRMATIVE DEFENSE

11 84. The counterclaims in the FAC are barred in whole or in part by the doctrine of "fair
12 use."

FIFTH AFFIRMATIVE DEFENSE

14 85. The counterclaims in the FAC are barred in whole or in part by the doctrines of
15 equitable estoppel, consent, and/or waiver.

SIXTH AFFIRMATIVE DEFENSE

17 86. The counterclaims in the FAC are barred in whole or in part by the doctrine of
18 copyright misuse.

SEVENTH AFFIRMATIVE DEFENSE

20 87. The common law counterclaims in the FAC fare preempted by federal law.

EIGHTH AFFIRMATIVE DEFENSE

22 88. The counterclaims in the FAC are barred in whole or in part by the doctrine of
23 unclean hands.

NINTH AFFIRMATIVE DEFENSE

25 89. The counterclaims in the FAC are barred by the Statute of Frauds.

TENTH AFFIRMATIVE DEFENSE

27 90. The counterclaims in the FAC are barred by documentary evidence.

ELEVENTH AFFIRMATIVE DEFENSE

91. Counterclaimant failed to follow the notice procedures required by 17 U.S.C. § 512 *et seq.*

TWELFTH AFFIRMATIVE DEFENSE

92. Counterclaimant lacks standing to bring this action.

THIRTEENTH AFFIRMATIVE DEFENSE

93. Chavez is entitled to offset against any claims by Counterclaimant.

FOURTEENTH AFFIRMATIVE DEFENSE

9 94. Chavez' investigation into the claims asserted in the FAC are ongoing. Chavez
10 reserves all defenses available under the Federal Rules of Civil Procedure and the Copyright Act
11 and all other applicable law and at equity that may now exist or in the future become available
12 based upon discovery.

WHEREFORE, Chavez respectfully requires this Court:

14 1. Enter Judgment against Counterclaimant and in favor of Chavez on all
15 counterclaims asserted in the FAC;

16 2. Dismiss the FAC with prejudice;

17 3. Award Chavez his reasonable attorneys' fees and costs in accordance with
18 applicable law; and

19 4. Award Chavez such further relief as the Court deems just and proper.

21 || Dated: August 17, 2021

WHITNEY, THOMPSON & JEFFCOACH LLP

By: */s/ Mandy L. Jeffcoach*

Mandy L. Jeffcoach
Attorneys for Jesus Chavez, Sr.